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6 IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 CHARLES WILIAMS, No. C 10-4277 WHA (PR)

11 Petitioner,

12 v.

**ORDER TO SHOW CAUSE;
GRANTING LEAVE TO PROCEED
IN FORMA PAUPERIS**

13 MATTHEW CATE,

14 Respondent.
15 _____ /

16 **INTRODUCTION**

17 Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus
18 pursuant to 28 U.S.C. 2254. He has applied for leave to proceed in forma pauperis.

19 **STATEMENT**

20 Pursuant to a conviction in 2007 in Santa Clara County Superior Court, petitioner was
21 sentenced to a term of 45 years to life plus 12 years in state prison. The California Court of
22 Appeal affirmed the judgment, and the California Supreme Court denied a petition for review.

23 **ANALYSIS**

24 **A. STANDARD OF REVIEW**

25 This court may entertain a petition for writ of habeas corpus "in behalf of a person in
26 custody pursuant to the judgment of a State court only on the ground that he is in custody in
27 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. 2254(a); *Rose*
28 *v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading

1 requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ
2 of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state
3 court must “specify all the grounds for relief which are available to the petitioner ... and shall
4 set forth in summary form the facts supporting each of the grounds thus specified.” Rule 2(c) of
5 the Rules Governing Section 2254 Cases, 28 U.S.C. foll. 2254. “[N]otice’ pleading is not
6 sufficient, for the petition is expected to state facts that point to a ‘real possibility of
7 constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d
8 688, 689 (1st Cir. 1970)).

9 || B. LEGAL CLAIMS

10 As grounds for federal habeas relief, petitioner claims that (1) he received ineffective
11 assistance of counsel at trial; (2) he was unable to present evidence challenging the credibility
12 of the victim, in violation of his right to present favorable evidence and to confront adverse
13 witnesses; (3) he did not receive a fair trial because of the exclusion of evidence challenging the
14 testimony of an expert witness; and (4) the trial court “abused its discretion” by not allowing the
15 defense to present evidence that the expert was biased. Claim numbers three and four both
16 address the same topic, namely whether the lack of evidence challenging the prosecution’s
17 expert testimony violated his petitioner’s constitutional rights. As such, the two claims may be
18 addressed jointly.

19 Petitioner's claims, when liberally construed, are cognizable.

CONCLUSION

21 1. The clerk shall mail a copy of this order and the petition with all attachments to the
22 respondent and the respondent's attorney, the Attorney General of the State of California. The
23 clerk shall also serve a copy of this order on the petitioner.

24 2. Respondent shall file with the court and serve on petitioner, within ninety days of the
25 issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing
26 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted based on
27 the claims found cognizable herein. Respondent shall file with the answer and serve on
28 petitioner a copy of all portions of the state trial record that have been transcribed previously

and that are relevant to a determination of the issues presented by the petition.

If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on respondent within thirty days of the date the answer is filed.

3. Respondent may file, within ninety days, a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a motion, petitioner shall file with the court and serve on respondent an opposition or statement of non-opposition within thirty days of the date the motion is filed, and respondent shall file with the court and serve on petitioner a reply within fifteen days of the date any opposition is filed.

4. Petitioner is reminded that all communications with the court must be served on respondent by mailing a true copy of the document to respondent's counsel. Petitioner must keep the court informed of any change of address and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

5. In light of petitioner's lack of money, his request for leave to proceed in forma pauperis is **GRANTED**.

IT IS SO ORDERED.

Dated: October 28 , 2010.

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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